PRIVILEDGES AND PREROGATIVES of the High Court of Chancery.

Written by the Right HONOVRABLE *Thomas* Lord *Elſmere*, late Lord Chancellour of ENGLAND.

LONDON,
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The Preface.

THe *gravitie and diſcretion of the Iudge in antient time, hath beene ſuch, as in doubtfull cauſes and eſpecially for conſtruction of Statutes, they deſired to conferre with the Kings Privie Councell, whereof there be many examples, ſome are cited in the Caſe of* Poſt nati.

And this ought to be ſpecially regarded, where the authority and Iuriſdiction of the Kings Court is to be brought into Diſpute and queſtion.

For gravius privatorum damno peccatur, Cùm inter ſummos Magiſtratus Curiaſuè majores de imperio certatur. *Bodm. lib. 3. Cap. 6. p. 425*

And in theſe caſes the Iudges ſhould firſt have private and loving Conference together, before publique diſputes, according to the Emperour's command. Alloquere illum, nè rem injuſtam faciat. *Bodm. lib. 3. Cap. 6. p. 425.*

The Preface.

NOTES AND OBSERVA-
tions upon the Statutes of *Magna Charta. cap.* 9. and other Statutes concerning the proceedings in the *Chancery*, in cases of Equitie and Conscience.

[illegible] Statutes, which be now urged and stood upon against the *Chancery*, are first *Magna Charta*, where the words be *Nisi per legale iudicium parium suoz vel per legem terræ.* It is *lex terræ*, that is, the Judges of the Common Law shall determine questions in Law, and *Pares & Iuratæ* to try matters in fact, so the *Chancery* is to order and decree matters of Conscience and Equity, which cannot be remedied by the [illegible] rules of the common Law. And the same rule serueth for understanding, the Statute *Anno* 25 *Edward.* 3. *cap.* 4. Vpon these words, *Si ne fit duem eni [illegible] & seruiendo d'icelle per voy de lege.* And [illegible] the cause of making that Statute, was [illegible] private suggestiõs made to the King or to his Councell, but not meant to take away the ordinary judiciall proceedings and hearing of Cases of conscience and equity in the *Chancery*.

Mag. Chart. Cap. 9.

Stat. 25. *Ed.* 3. *Cap.* 4.

Hath the same words, as *Magna Charta, cap.* 9. viz. Without being brought into answer by due processe of Law: For understanding whereof, that is to be remembred, that those that are sued in the *Chancery* are

Stat. 28. *Ed.* 3. *Cap.* 3.

are brought to another by due processe of law, for cases of equity and conscience as it is *per legem terræ*.

Stat.2.Ed.3. Cap.8. That it shall not be commanded by the great Seale or the little Seale, to disturbe or detaine common right / and though such commandement doe come, the Iustices shall not therefore cease to doe right in any point.

For the understanding of this Statute.

The ordinary Iudiciall proceedings by the *Chancery*, according to conscience and equity, is not any disturbance, or delay of Common right.

But is the doing of right and Iustice in cases, which the common Law cannot helpe, for common right standeth not only in the strict rigour, and extreamity of the Law (for often *summum ius est summa iniuria*) but rather in the doing of right, according to equity and conscience: And the Iudges of the common Law themselves, doe almost every day extend their discretion, to stay and mitigate the rigour and strictnesse of the common Lawe and in so doing doe, well notwithstanding the strict word of their oath.

Stat.14. Ed. 3. Cap.14. Declareth the law concerning writs of search, and in the end of the same Statute, these words, *viz.* That by commandement of the great Seale, noe Privie Seale, nor point of this Statute, (viz. concerning Search) shall be put in delay.

Nor that the Iustices, of whatsoever place they be, shall lett to do the common law by commandement, which come to them under the Great Seale or Privie Seale.

The Common Law hath alwaies allowed the proceedings in the Chancery, in causes of conscience and

equity

equity, and therfore the words (to doe the Common law) must not be construed too precisely, as thereby stop all Courts of equity, for it standeth with the common law, as well that equity and conscience bee ministred, where the common law cannot helpe, as that strict Iustice be ministred according to the common law, when the common law may serve.

The Chancery doth not commonly send any Writ or Commandement to the Iudges, under the great Seale cõmanding them to stay to do Iustice, but awardeth Iniunction to the parties, that seeke to have the advantage of the strictnesse of the common law, against equity and conscience: nevertheless there be plentiful examples that Writs of *super sedeas*, under the great Seale have beene directed to the Iudges, in diverse speciall causes, and have in all times (untill of late) beene dutifully obeyed, as in cases of priviledge and to stay their proceedings: *Reges in consilio* and divers others, &c. 2

Also it is to bee remembred, that many Iudges of the common Law have complayned, and sued for remedy in the Chancery; and have beene sued and answered there, and obeyed the orders of that Court in cases of equitie and conscience, which could not bee relieved by the Common law.

This Statute is perfuing two former *Statutes*, one 37. *Edward* 3. *cap.* 18. which giveth *panam Talionis*, against those, which make false suggestions to the King: the other 38. *Edward* 3. *cap.* 9. which confirmeth the former statute in all things saving *propanam Talionis*. And this 42. *Edward* 3. explayneth the two former, and provideth that the people be not greived by false accusers which doe often times make their accusements more for vengeance and singular profits then for the profits *Stat.* 42. *Ed.* 3. *cap.* 3.

profits of the King and his people, and therefore ordaineth that none bee put to answer (which is to bee intended upon such accusation and false suggestions) without. 1. presentment before Iustices, or 2. matters of Record, 3 by due processe, or 4. by Writ originall according to the onely law of the land.

In this Statute, the intent is to bee considered, first to explaine the second former statute *Anno* 17. *Edw.* 3. and *Anno* 38. *Edw.* 3. as is before noted; 2. that the antient law of the land bee observed, that is; That for matters determinable by the common law, none bee put to answer, but by presentments or matters of Record, or by originall Writ, or by due processe. But therein is not meant, that the ordinarie iudiciall proceedings in the Chancery, in matters of equity and conscience (not being remediable by the Statutes of the common law) should be taken away or restrained: But that in such cases, they may proceede against parties called in by due processe, for that is according to the antient law of the land.

So the practise and experience hath beene ever since, which is the true and certaine interpretation of that Statute and of all other Statutes.

Stat. 4. Hen. 4. Cap. 23.

The words be these: Whereas as well in plea Reall, or as in plea personall after Iudgement given in the Courts of our Soveraigne Lord the King, the parties be made to come upon grievous paines some time before the Kings Councell, & sometime in the Parliament, to answer thereof anew, to the impoverishment of the parties aforesaid, and subversion of the Common Law of the Land: It is ordained and established, that after Iudgement given in the Court of our Soveraigne Lord the King, the parties and their Heires thereof shall be in peace until the Iudgement

shall

ſhall bee undone by attaint, or by errour, if there bee errour, as hath beene uſed by the Lawes in the time of the Kings progenitors.

For underſtanding of this Statute the queſtion is,

Whether there be any thing in the word or intent of this Statute to take away, or reſtraine, or impeach the Iuriſdiction of the Chancery to give remedy and releife according to conſcience and equity in caſes, which cannot bee remedied by the ſtrict rules of the common law, by attaint, or by Writ of errour.

For the reſolving of this queſtion, is to bee conſidered, what hath beene uſed by the lawes, before the making of this Statute.

And to this point I muſt ſay, I have not ſeene any record or Preſident, that the Court of Chancery hath beene reſtrayned to heare and determine cauſes of conſcience and equity, and to give relieſe accordingly, as well after, as before Iudgement given by the Judges of the Common Law.

But before the making of this Statute; there bee many precedents and records to prove, that the King and his Councell, and the Kings Commiſſioners appointed to be auditors *querelarum* & Court of Rome, & ſome, pretending to have power and authority for the Pope, did take upon them to examine ſuch Iudgements to reverſe and undoe the ſame, which ſeemeth to be the point remedied by this Statute: And this is within the direct and preciſe words of the Statute, whereupon it may be inferred and concluded, that is the words ſhall bee taken preciſely in the ſtrict *Un. Stat. 29. Ed. 3. cap. 1.*

ſence; Then the King himſelfe and his Counſell, and the Parliament, who in time of the Kings progenitors, uſed to examine & reverſe Iudgements, ſhall be bound and reſtrained by the *Statute*; But the Chancery medleth not with the reverſing of the Iudgments given by the Iudges of the common Law, but in allowing the ſame to be good and juſt, according to the ſtrict rule of the Common Law (whereunto the Iudges are ſworne) doth examine only the equity of the caſe, according to the rule of equity and conſcience, and taketh order with the partie, to doe that which in equity and Conſcience ought to bee done, which the Iuſtices of the Common Plees hath no power to doe, and that ſeemeth to be the true reaſon that the Statute doth not once mention the Chancery.

And it cannot reaſonably be conceived, that the Parliament meant to bind the Chancery (which is not named) or the King or his Counſell and the Parliament it ſelfe, which are expreſſely named: That they ſhould not releive parties that are greived by the Rigour of the common Law, againſt equity and conſcience in caſes, which the Iudges of the Common Law cannot relieve thē by attaint, or errour, or otherwiſe. For *ſententia Iudicis non praeiudicat veritati*: And *ſicut res iudicata naturalem obligationem non tollit, Ita conſpercatam, laſamque conſcientiam non purgat*: And ſome doe aptlie & truely define equitie thus; *Equitas eſt publici iuris moderatio a pectore Regio, velut ab Oraculo petenda.* And another ſaith thus, *Equitas in poteſtate moderatoris eſſe debet, multa contra ſcriptum facere et dicere*: Another ſaith, *Equitas iuſtitiae aciem retundit*: And Saint *Auguſtine*, *Lex quia ſe ipſam mederi non poteſt mitiganda eſt*

In Caſus. 192. in que. vel. & novi. lib. predict. Cap.

est & contemptus, fraus, & dolus, in Curia Regali veniunt subuenire debent.

And furthermore for the true understanding of this Statute, and all other Statutes, this rule should be observed; 1. to understand, and consider what was the mischeife at the Common Law, which the Parliament meant to remedie within this Statute. It appeareth to have beene the reversing and undoing of Iudgements by the King or his Counsell, or his Commissioners or Parliament, which might and ought to be examined by attaint or errour, as is aforesaid, but not the ordinary Iudiciall proceedings in Chancery, according to equity and conscience to give releise to the partie grieved, by the strict rigour of the Common Law or in cases which could not be remedied by attaint or errour, or by any other ordinarie meanes by course of the Common Law, and where they in that equitable proceeding did not attempt to reverse or impeach the iudgement given by the Common Law, but to admit and allow the same to be good and iust, as is before declared. 1.

The next is how this Statute was understood and expounded at, and soone after the tyme of the making of that, for in all cases *contemporanea expositio* is specially to be regarded, and for it (as I said before) I have not seene any Record or Precedent that this Statute hath beene expounded to restraine the Chancery, to proceede in their ordinary course, to give releife in cases of equity, according to good conscience, blere the tyme of the making of it, or many yeares after. 2.

And I suppose no such materiall or effectuall record or precedent can be shewed. And for later times as in the time of *Hen.* 7. the seventh, and since, the pro-

eeedings and examples bee so frequent, and so plaine & direct, as nothing is more common, and it is a certaine and true rule *Intellectus currit cum praxi.*

4. And if any ambiguity, or doubt should bee conceived upon the words and intent of this Statute, sith it concernes the jurisdiction of the Kings Courts, which have no power, nor authority but from the King whom they serve. One Court ought not to take upon them to Iudge and deside their owne Iurisdiction, and the Iurisdiction of another of the Kings Courts: But then *Bractons* rule is to be holden: (that is) that the King's interpretation is to be expected, Who is to declare and expound all doubtfull or obscure words in *Chartis Regiis & factis regum*: For all Statutes are *facta regia*, made at the request and by the consent of the Lords Spirituall and Temporall, and the Commons.

Bracton. lib. 2. fol. 34. cap. 16.

22. Edw. 3.

And where some new conceits have beene lately imagined, that the partie grieved should have complained before Iudgement or else not to be heard or relieved after Iudgement by reason of this Statute. This is but a cavill and a Sophisticall distinction not worthie the answering. For before hee bee hurt, he hath no cause to complaine, & that, which hurts him, is the Iudgement grounded upon the strictenesse & rigour of the Common Law, against equity and conscience, and when he feeles the wound, it is time for him to complaine to seeke remedie, by complaining of the wrong, which is done unto him by the rigour of the Common Law, contrary to equity and a good conscience, and of this sort be the precedents and examples before mentioned.

Lastly it is to bee lamented that the antient common Lawes are so much neglected and contemned,

and

and almoſt growne obſolete and out of uſe: that for the moſt part, wee have not the ſubſtance but the ſhadow of the antient Common Law, *Manet magni nominis umbra*: and therefore his Majeſtie at the firſt beginning of his gratious raigne of *England*, did moſt princely, prudently, and iuditionſly ſhew his miſlike of the incertaintie of the Iudicature in his Courts of Iuſtice in *England*, and require and commanded his Iudges to take mature conſideration of it. What followed I will ſay nothing. *King Iames.*

Wherefore let the Iudges now conſider, how they obſerve in their Courts and proceedings, the words and intent of this Statute, whether after Iudgements the parties be in peace, untill the Iudgement bee undone by attaint, or errour, whether after Iudgements in Writs of errour firme, they ſuffer not new Actions, and verdict, againſt verdict, and Iudgement, againſt Iudgement without attaint or errour to the manifeſt deluding of the true and antient Maximes of the common Law, and without regarding of the words of the Statute. And thus ſuites for one, and the ſelfe ſame cauſe, are carried from Court to Court, as power and might of the parties, or favour or affection of the Iudges, or corruption of Sheriffes or ſubordination or periury of Witneſſes or ſuch like ſhifts or tricks can beſt accomodate the buſineſſe.

De Chartis regiis & factis regum, non debent, nec poſſunt Iuſticiarij, nec priuatæ perſonæ diſputare, nec etiam niſi illâ dubitatio oriatur, poſſunt eam interpretari & in dubiis et obſcuris, vel ſi aliqua dictio duos contineat intellectus Domini regis erit expectanda interpretatio & voluntas eius ſit interpretari, cuius eſt condere. Maneant termini patrum, & inter fines proprios ſe quiſque contineat, Sufficiant limites, *Bracton. lib. 1. fol. 34. cap. 16.* *Leo. Epiſt. 67. & 94.*

quos sanctorum patrum providentissima decreta Posuerunt.

Stat. 25. Ed. 3. Cap. 22. Some notes and observations upon the Statutes of *Provisoes* and *Præmunire* especialy concerning the Chancerie and other Courts of equitie.

The words be, 1. because some doe purchase in the Court of *Rome* provisions, to have Abbies and Priories in *England* in destruction of the Realme, and of holy religion, it is accorded that every man that purchaseth such provisions of Abbies and Priories, that he and his executors, and procurators, which doe sue and make execution of such provisions, shall be out of the Kings protection, and that a man may doe with them, as of enemies of our Soveraigne Lord the King and his Realme.

Note. Note the usurpation of the Church of Rome in this Case Iudged at this time, to be the distruction of the Realme and of Religion.

And the partie himselfe and his Executors and procurators putting in execution such provisions, judged to be enemies of the King and Realme, and out of the Kings protection, (and so in worse degree then Traytors) and that therefore every man might iustifie the taking of their goods, and killing of them, and not to be impeached for it.

Anno 25. Edward 3. There is another Statute entituled *Statute de proviseris*, declaring the great mischeife that the King and the Realme sustayned, by the usurpation of the Pope, in cases of provisions and reservations of Benefices, reciting the Lawes ordained by King *Edward* the first, and adding further remedie, and severe punishment against the offenders; and that no proceese or

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ſute ſhould bee in theſe caſes in the Court of *Rome*, nor in no part elſe where.

Both theſe Statutes were ſpecially provided to reſtraine the uſurpation of the Pope, and the Churches of Rome in theſe caſes of proviſions, and reſervations.

By the Statute *Anno* 27. *Edward* 3. it appeareth, That notwithſtanding the two former ſtatutes *Anno* 25. *Edward* 3. yet the uſurpation of the Pope, and the Church of Rome, was ſo exorbitant, that the Nobles and Commons complained in this Parliament, and prayed further remedie for the ſame, alledging that divers of the people have beene drawne out of the Realme, to anſwer of things whereof Counſance pertayneth to the Kings Court, or of things whereof Iudgements be given in the Kings Court, or which ſue in another Court, to defeate or impeach the Iudgements given in the Kings Court, in prejudice and diſheriſon of the King and his Crowne, and of all the people of his Realme, and the undoing and diſtraction of the Common Law of the ſame Realme at all times vſed. *Stat. 27. Ed. 3. Cap. 1.*

This is the Miſchiefe, which was complained of and was deſired to be remedied.

The Offenders, againſt whom remedie is ſought, are theſe, which draw any out of the Realme by plea.

Wherfore the Counſance being to the Kings Court or of things, wherof Iudgements be given in the Kings Court, or which doe ſue in another Court, to de-

feat

feat or impeach the Iudgements given in the Kings Court.

Then the remedie provided is,

That such offenders shall receive punishment by two moneths, to be before the King and his Counsell, or in his Chancery, or before the Kings Iustices of the one Bench or other, or before the Iustices of the King, which to the same shall bee deputed to answer in proper person to the King for their contempt done in this behalfe, and if they come not, then to be out of the Kings Protection, &c. Provided, that when they doe come before, they be out-lawed, they shall be received to answer.

Now it will appeare manifestly that the intent of the Parliament, was not to restraine or punish any that complayned and sued in the Chancery, to bee releived according to equity and Conscience; In Cases wherein, by the strict rules and rights of the Common Law, the Iudges of the Common Law could not releive them, neither are there any words in the Statute, which can without violence bee strayned or reathed to serve any such unreasonable Construction: For the better understanding hereof, the parts of the Statute are to bee devided and severally considered.

1 1. As first the mischeife complained of.

2 2. The offenders, against whom, the Complaint is.

3 3. The remedie provided, and against whom, the forme of proceeding therein.

For the mischeife, the Parliament finding, that the Pope and Court of Rome did not only continue

tinue their usurpation in the Cases mentioned in the former Statute *An.* 25. *Ed.* 3. But did also extend it further in drawing the people out of the Realme to answer things, whereof the Counsance pertaineth to the Kings Court, or of things whereof Iudgements bee given in the Kings Court, or by suit in another Court, to defeate or impeach the Iudgements given in the Kings Court, In prejudice, &c.

In the preamble, wherein this mischeife is declared, it appeareth that the drawing of the people out of the Realme to answer to these Cases, (specially remembred,) was the greife of the people, for which they prayed remedie.

But by suites in the Chancery to be relieved according to equity and conscience in cases, in which the Iudges of the Common Law could not give remedy, the people were not driven out of the Realme, nor Iudgement given in the Kings Courts, were not sought to be defeated or impeached, but conscience and equity to be observed.

Nor such suites in the Chancery cannot bee accompted to be any other court then the Kings Court, For the *Chancery* is one of the Kings supreame Courts of Iustice, and as much or more greived by the inordinate usurpation of the Pope and his Courts, as any other of the Kings Courts. Neither could such suits in the *Chancery* being the Kings own supreame court, bee in prejudice or dishersion of the King and his Crowne, and of his people, or the undoing or distruction of the Common Law at all times used. And I suppose there can no record or warrantable precedent be shewed that such proceedings in the *Chancery* hath in times before used (that is before 17. *Ed.* 3.) Beene construed to be the undoing or destruction of the Common Law.

And hereupon it may bee inferred and concluded, that those, which complaine and sue in the *Chancery* for releise and remedie, according to equity and conscience, in such cases as the Iudges of the Common Law cannot remedie, are not any offenders within the words or meaning of this Statute.

And this will appeare more plainely by the remedie, which is provided; that is, that the offenders shall have garnishment by two moneths, to appeare before such Iudges, as are assigned to give remedie in the causes before mentioned in the Statute, which are these: The King and his Counsell the Chan. the Iustices of one Bench or the other, or other Iustices of the Kings, which shall be deputed.

Wherein is to be noted, that the Chancery is the second Court that is appointed to give Iustice against such offenders, as the Parliament meant, and is placed next after the King and his Councell, and before the Iudges of the one Bench or the other (between whom the Parliament giveth no prioritie nor precedent) & addeth such other Iustices, as the King shal depute. By which power the King may by the Statute exclude both these Courts, & appoint other Iustices, if it shall please him so to doe.

Now it is too absurd to say or imagine that the ordinarie and iuditiall proceedings in the *Chancery* by the Kings owne Authority, in cases before remembred can be in prejudice or disherision of the King or his Crowne or destruction of the Common Law; or that the Parliament did so meane or understand, sithe they have designed the *Chancery* to bee a speciall or prime Court to punish offenders against the said Statute.

And to resort to the true rule *Contemporanea expo-*

sitio,

sitio, for *Intellectus currit cum praxi*. I have not seene nor heard that any person hath beene charged, or impeached by suit in the nature of a Præmunire upon this Statute for sueing in the Chancery in the Cases before remembred, or in any other like cases.

The Statute 27. *Ed.* 3. was grounded upon the exorbitant usurpations of the Pope and Church of *Rome*, which were in some sort provided for, by the former Statutes *Anno* 25. *Ed.* 3. But the Parliament *Anno* 27. *Ed.* 3. finding the same too weake, and the Church of Rome did not only continue their former usurpations, but did daily increase the same more and more, did therefore devise further remedie against their insolent and outragious excesse.

Wherein appeareth that the speciall mark, whereunto both those Parliaments aymed & directed their Actions, was to provide and give remedy against the wicked proceedings of the Pope and Court of Rome, and not to restraine the jurisdiction and authority of any of the Kings owne Courts in their ordinarie and judiciall proceedings, either in law or equity, and by that, which is before remembred, is sufficiently declared, yet the same is made more manifest by the Statute *Anno* 38. *Ed.* 3. Stat. 2. *cap.* 1, 2, 3, 4.

By which it appeareth that in 9. yeares space, after the Parliament *An.* 27. *Ed.* 3. the Pope and Church of Rome ceased not to goe on still in their wicked and inormious usurpations upon the king & the Crown, and therefore that Parliament *Anno* 38. *Ed.* 3. declareth plainely, that it was the Court of Rome, that dealt in cases, whereof the Counsance and finall discussions pertaine to the King and his Royall Court; and for remedie thereof ordaineth, that the former Statute made *Anno* 25. *Ed.* 3. and *Anno* 27. *Ed.* 3.

shall be in all things affirmed and executed, adding also some further punishments and provisions against the offenders, directing the proceeding therein to be before the King and his Councell, onely without mentioning any other Courts, as 27. *Ed.* 3. did.

So as upon conferring together these three Statutes viz. 25. 27. and 38. *Ed.* 3. it appeareth that the intent of all these Parliaments was onely to punish offenders, that maintained the usurped and pretended authority of the Pope, & Church of Rome, and prosecuted any Action or suite by vertue of the same in any case, whereof the Cognizance and finall discussing perteyned to the King and his Courts; And therefore if any doube bee conceived upon any words in the Statute 27 *Ed.* 3. it is to be explained by the Statute 25. *Ed.* 3. going before, and the Statute 38. *Ed.* 3. comming after.

Stat. 16. *Ric.* 2. *Cap.* 5. After all these Statutes, yet ambitious usurpers, and greedy & grievous extortions of the Pope and Court of Rome ceased not, but still continued and increased more and more, whereupon the Parliament *Anno* 16. *Rich.* 2. *chap.* reciting some particular cases, *viz.* that Iudgments being given in the Kings Courts for recovery of presentments to Churches, & Benefices, and the same Iudgements duly executed by the Arch-bishop and Bishop as they ought to bee; That thereupon the Archbishop and Bishop have excommunicated by the Popes censure for executing of the same Iudgements.

2. And also that the Pope did ordaine and purpose to translate some Prelates out of the Realme, and some from one Bishop-prick to another within the Realme, without the assent or knowledge of the King, by which the king should bee destitute of his Councell;

and

and the treasure of the Realme to bee made away out of the Realme, and so the Regality & Crowne should be made subject to the Pope in perpetuall distruction of the King and his Crowne, and all the Realme.

In which cases, and in all other cases attempted against the King, his Crowne, and Regalitie, the Lords Temporall and Commons, did promise to stand with the King and the Crowne, and to live and die; and the Lords Spirituall promised also, to stand with the King in the cases before mentioned, and in all other cases bound by their alleagiance with a speciall protestation and saving of the Popes authority in excommunicating of Bishops, and translating of Prelates, according to the Lawes of the holy Church, & thereupon it is ordained and inacted, that if any purchase or pursue in the Court of Rome or elsewhere, any such translations, processes, and sentences of excommunication, Bills, Instruments or other things, which touch the King, against him, his Crowne and Regality, or his Realme, as is aforesaid: And they, which bring or receive the same within the Realme, or make thereof notification or any other execution within, or without that they, &c. shal forfit, &c. and to be put out of the Kings protection, & be attached, &c. and sue in processe of Premunire, &c. And against others, which sue in other courts in derogation of the Kings royaltie.

By this it appeareth plainely, that the Pope and Court of Rome continued still, and proceeded further in their exorbitant usurpation upon the Crowne and Kings Royaltie, and the common Lawes of the Kingdome; So this Parliament endavoured to meete with, and stand with the same, namely in the particular cases, which are specially mentioned, *viz.* Concerning Iudgements given in the Kings Court in

theſe pleas and caſes, and in tranſlating of Prelates &c. and in other caſes attempted againſt the Kings Crowne and Regality; But it is manifeſt, that the intent and the ſcope and drift of the Parliament was onely againſt the Pope and Court of Rome, and againſt thoſe perſons, that perſue any ſuch Tranſlations, proceſſe, &c. or other things, which touch the King, or againſt his Crown, or Regality or his Realme as is aforeſaid, and which being, notifie or execute the ſame within the Realme or without, theſe be offenders, which the Parliament had cauſe, and meant to puniſh; and it is ſtrange and improbable that any learned Iudge of the Common Laws of *England*, ſhould ſtretch or extend the words of this Statute further, then only againſt the uſurped aurhority of the Pope, and Church of Rome; But it ſeemeth that ſome that take pleaſure *ludere in verbis, dormitare in ſenſibus*, and to diſpute *de apicibus juris, equi & boni ratione prætermiſſâ*, and to profeſſe learning *peritiâ literali non intelligentiâ ſpirituali*; And ſo are contented *verba legis tenere & vim legis ignorare*, have gone about to preſſe and ſtraine the word of this Statute, not onely againſt the Pope and Church of Rome, but alſo againſt the Kings owne High Court of Chancery, and other his Majeſties Courts of Equitie in *England*, grounding, their opinion and conceit upon theſe words of the Statute.

If any purchaſe, in the Court of Rome or elſe where, any ſuch Tranſlations, or proceſſes, or other things which touch the King: And for the better underſtanding hereof, it is to bee remembred, that the Pope & Court of Rome kept their Seiges and Court not at Rome onely, but ſometimes at *Avignion*, ſometimes at other places; and divers Antipopes beeing at one

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and the selfe same time, kept their severall seiges and Courts at severall places, and yet each of them challenged, and pretended to have supreame jurisdiction, power, and authority over and above the King and his Crown, & regality in the cases before remebred; And therefore it was requisite and necessarie for the King and the Parliament to withstand and provide remedy against the same.

And that is the true and right understanding of *Ou Aylors:* For it is too absurd to say, or imagine that the King or Parliament meant to extend the same against the Kings owne Courts of equity in *England*, which dirived their authority and jurisdiction from him onely: and heard and determined, as his substitutes, according to equity and conscience, such cases as the Iudges of the common Law could not by the strict rules of the Common law Iudge & determine.

These Courts and the Iudges, & Ministers therof, the King had power to suppesse, altar, and punish at his pleasure, and therefore against these the Lords Temporall and Commons needed not to engage themselves to stand with the King and the Crowne, and to live and dye, Nor the Lords Spirituall & Clergie to promise to stand with the King, as they were bound by their alleageance, with their Cautious protestations for the ordinarie, legall & iuditiall proceedings, the Chancery and Courts of equity according to conscience.

The King, nor his Crowne, nor Regality, nor the Common Law were not in any danger, but the danger was by the ambitious usurpation of the Pope, and the Church of Rome, and by the proceedings in the Courts holden by that usurped authority; and therefore against them the Parliament provide this Sta-

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ture following, the example of the former Parliament 25. *Ed.* 3. 27. *Ed.* 3. and 38. *Ed.* 3. and those be the Courts which this Parliament, & the Parliament *Anno* 27. *Ed.* 3. *cap.* 1. noted to bee in derogation of the Kings regalitie and destruction of the Common Law, but not the Kings owne Courts of equity and Conscience. And for the further cleaning of this doubt, if it be worthy to be made a doubt, how these words *on Ayl'ors* shall be understood, in the 5. *Ed.* 4. there is this note, *Nota, que le statute de premunire est in Curia Romana vel alibi: lequel alibi, est intendue en les Courtes del evesques il mit, que si home sotte accompt en court del evesques perchose que appent al Royall Majestie ses shose a'comen l'pil aur premunire & issent adiudge & fith*: abridging that case saith, that 14. *Hen.* 7. the opinion of the Court was so, which he himselfe heard.

An. 5. *Ed.* 4. 6. 9.

Premunire.

By which it appeareth, that the Iudges did then understand the proceedings by the Bishops in the Spirituall Courts, which was by authority derived from the Pope and Church of Rome, was onely meant by the word *vel alibi*. But not the procedings in the Kings owne Court of Chancery by authority derived from him onely in cases of equity and Conscience not remediable, otherwise for that were to set the King against himselfe, which is too inconvenient and absurd.

TINIS.